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Telephone: 503.224.3380
Facsimile: 503.220.2480

Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ELIZABETH ROUFFY, individually and on
behalf of other customers,

Plaintiffs,

v.

WALGREEN CO.,

Defendant.

Case No.:

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332(a), 1441, 1446, and 1453, defendant Walgreen Co. (“Defendant”) files this Notice of Removal to remove this action, and all claims and causes of action therein, from the Circuit Court for the State of Oregon for Multnomah County, as follows:

1. On August 16, 2021, plaintiff Elizabeth Rouffy (“Plaintiff”) commenced the action entitled *Rouffy v. Walgreen Co.*, Case No. 21CV32890, in the Circuit Court for the State

of Oregon for Multnomah County. A true and correct copy of Plaintiff's original putative class action complaint (the "Original Complaint") is attached hereto as part of Exhibit A.

2. On July 28, 2022, Plaintiff filed in the Circuit Court for the State of Oregon for Multnomah County an amended complaint titled Amended Complaint for Damages (the "Amended Complaint"), adding a prayer for statutory damages. A true and correct copy of the Amended Complaint is attached hereto as part of Exhibit A.

3. In the Amended Complaint, Plaintiff alleges that Defendant violated the Oregon Unlawful Trade Practices Act ("UTPA"), ORS 646.608(1)(s) by charging an undisclosed "Recycling Fee" on a package of Wyler's powdered lemonade. (Am. Compl. ¶¶ 14-16.) Plaintiff seeks \$200.00 statutory damages, attorney fees and costs." (*Id.* ¶ 16.)

4. Pursuant to 28 U.S.C. § 1446(b)(3), this notice of removal is being filed within thirty days of receipt by Defendant of a copy of the Amended Complaint, which is the pleading "from which it may first be ascertained that the case is one which is or has become removable." This notice of removal is thus timely filed in accordance with 28 U.S.C. §§ 1446(b) and 1453(b).

5. Defendant bases this notice of removal upon 28 U.S.C. § 1441(a), which permits defendants to remove any state court civil action over which the district courts of the United States have original jurisdiction.

6. This Court has original jurisdiction over the Amended Complaint pursuant to 28 U.S.C. § 1332(a), which applies where (1) the action is between "citizens of different States," and (2) the amount in controversy exceeds \$75,000.

7. First, there is complete diversity between the named Plaintiff and the Defendant as defined in 28 U.S.C. § 1332(a)(1). Defendant is a corporation organized under the laws of

Illinois, with its principal place of business located in Illinois. Upon information and belief, the named Plaintiff is a citizen of Oregon.

8. Second, the amount in controversy is in excess of \$75,000 based on the attorney's fees sought by the named Plaintiff under ORS 646.638. Because the case is expected to involve complicated and technical factual questions and discovery concerning erroneous transaction charges and extensive litigation relating to liability and damages, the Court may conclude that attorneys' fees will exceed \$75,000. *See Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018) (amount in controversy includes future attorneys' fees).

9. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders served upon Defendant in this case are attached hereto as Exhibit A.

10. Pursuant to 28 U.S.C. § 1446(d), Plaintiff will be provided with written notice of the filing of this notice of removal.

11. Pursuant to 28 U.S.C. § 1446(d), a copy of this notice of removal will be filed with the Clerk of the Circuit Court for the State of Oregon for Multnomah County.

WHEREFORE, Defendant Walgreen Co. removes this action from the Circuit Court for the State of Oregon for Multnomah County to this Court.

DATED: August 3, 2022.

STOEL RIVES LLP

/s/ Stephen H. Galloway
TIMOTHY W. SNIDER, OSB No. 034577
timothy.snider@stoel.com
STEPHEN H. GALLOWAY, OSB No. 093602
stephen.galloway@stoel.com
Telephone: 503.224.3380

Attorneys for Defendant

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

ELIZABETH ROUFFY
individually and on behalf
of others similarly situated

Plaintiff

VS

WALGREEN CO.

Defendant

Case No. 21CV32890

SUMMONS

TO: **WALGREEN CO.**
c/o REGISTERED AGENT
THE PRENTICE-HALL CORPORATION SYSTEM, INC.
1127 BROADWAY STREET NE STE 310
SALEM, OR 97301

NOTICE TO DEFENDANT:

READ THESE PAPERS CAREFULLY!

You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal document called a “motion” or “answer.” The “motion” or “answer” must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff’s attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar’s Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

August 18, 2021

/s/ Michael Fuller
Michael Fuller, OSB No. 09357
Lead Trial Attorney for Plaintiff
OlsenDaines
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-222-2000

1
2 STATE OF OREGON)
3) ss:
4 County of Multnomah)

5 I, the undersigned attorney of record for plaintiff, certify that the foregoing is an
6 exact and complete copy of the original summons in the above-entitled cause.

7
8 August 18, 2021
9

10
11 /s/ Michael Fuller
12 **Michael Fuller, OSB No. 09357**
13 Lead Trial Attorney for Plaintiff
14 Olsen Daines
15 US Bancorp Tower
16 111 SW 5th Ave., Suite 3150
17 Portland, Oregon 97204
18 michael@underdoglawyer.com
19 Direct 503-222-2000
20
21

22 TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are
23 hereby directed to serve a true copy of this summons, together with a true copy of
24 the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to
25 whom or which this summons is directed, and to make your proof of service upon a
26 document which you shall attach hereto.
27

28 August 18, 2021

24
25 /s/ Michael Fuller
26 **Michael Fuller, OSB No. 09357**
27 Lead Trial Attorney for Plaintiff
28 Olsen Daines
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-222-2000

8/16/2021 11:53 AM

21CV32890

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

ELIZABETH ROUFFY
individually and on behalf
of others similarly situated

Plaintiff

vs

WALGREEN CO.

Defendant

Case No.

**CLASS ACTION
COMPLAINT FOR
EQUITABLE RELIEF**

The Unlawful Trade Practices Act
ORS 646.605 *et seq.*

Filing Fee Authority: ORS 21.135
Not Subject to Mandatory Arbitration

Jury Trial Requested

1.

INTRODUCTION

After Walgreen refused Ms. Rouffy's request to refund an 80-cent overcharge, she decided to reach out to a consumer protection law firm:

[Michael Fuller] Oregon Lawyer for the
Underdog Inbox x

✉ **esrouffy@comcast.net** w... Aug 14, 2021, 4:04 PM (22 hours ago) ☆ ↩ ⋮
to me ▼

Email: esrouffy@comcast.net

Question: I was charged an 80 cent "recycling fee" by Walgreens for one box of single-serve drink mix powders. The box contains 8 individually wrapped sticks of powder design to be added to a bottle of water. The entire box only cost \$1! I attempted to ascertain why I was charged this fee. A manager told me it was an Oregon State fee. After Googling this fee, I discovered this is not a new practice for Walgreens. What should I do now? I want my 80 cents returned! Thanks.

2.

The UTPA protects Oregon consumers and small businesses against overcharging by large corporations.¹

3.

The UTPA is enforced either by the Oregon Attorney General, or by a consumer protection law firm acting as a private attorney general.²

4.

A consumer or small business may choose to incur the risk and cost of enforcing the UTPA not only for themselves but for the general public, through a class action.³

5.

A law firm acting as private attorney general who prevails in a UTPA enforcement action is entitled to payment of reasonable attorney fees by the defendant in the case.⁴

6.

The plaintiff in this case, Ms. Rouffy, was charged 80 cents more than the advertised sticker price when she bought Wyler's Light drink mix powder at her local Portland Walgreen store. After Walgreen refused her request for a refund, Ms. Rouffy did research on the Internet and found out that Walgreen had a history of unlawful trade practices cases in Oregon and a history of overcharging consumers.

¹ ORS 646.608(1)(s)

² ORS 646.618; ORS 646.638

³ ORS 646.638(8)

⁴ ORS 646.638(8)(3)

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2 7.

3 **FACTUAL ALLEGATIONS**

4 This complaint's allegations are based on personal knowledge as to plaintiff's
5 own behavior and are made on information and belief as to the behavior of others.
6

7 8.

8 Plaintiff is an individual living in Portland, Oregon.
9

10 9.

11 Plaintiff is a "person" as that term is defined at ORS 646.605(4).
12

13 10.

14 Defendant regularly advertises and sells consumer goods at its stores in
15 Portland and throughout Oregon in the course of its business as a large corporate
16 retailer.

17 11.

18 Defendant is a "person" as that term is defined at ORS 646.605(4).
19

20 12.

21 The consumer goods defendant advertised and provided to plaintiff and other
22 class members were obtained primarily for personal, family or household purposes.
23

24 13.

25 On August 14, 2021, defendant advertised and provided consumer goods to
26 plaintiff at defendant's store at 7280 SW Beaverton Hillsdale Highway in Portland,
27 Oregon. An image of plaintiff's receipt proving her purchases is below.
28

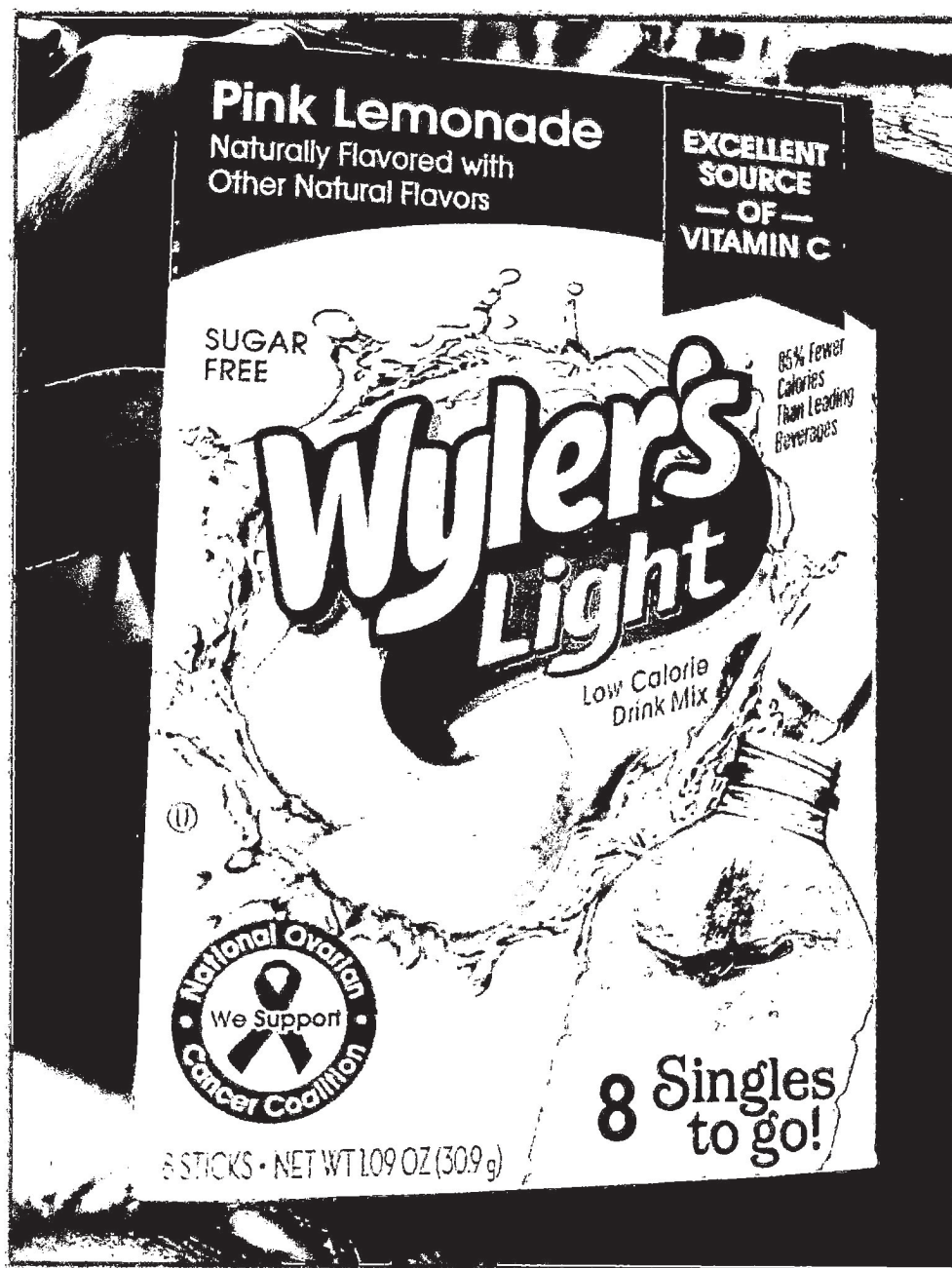


14.

Defendant's sticker on its shelf advertised its Wyler's Light consumer goods to plaintiff as costing one dollar. After plaintiff paid for the Wyler's Light and read her receipt, plaintiff discovered that defendant's sticker price was falsely advertised because defendant added and collected a hidden 80-cent surcharge on the Wyler's Light that was omitted from the advertised price of the Wyler's Light to plaintiff, causing plaintiff ascertainable loss of the 80-cent overcharge that was collected from her.

15.

An image of the Wyler's Light drink mix powder that defendant advertised and sold to plaintiff on August 14, 2021 is below.



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16.

CAUSES OF ACTION

Claim One – Unlawful Trade Practices

This claim is not a request for damages at this time, only equitable and injunctive relief. Plaintiff and the other class members intend to request damages in an amended complaint, only if defendant refuses to provide the identity and contact information for each putative class member, notify each member that upon request defendant will make the approximate compensation and remedy the alleged wrong, and cease from engaging in the practices alleged to be violative of the rights of the members, according to ORCP 32 I.

17.

As alleged in this complaint, in the course of its business, defendant made false or misleading representations and omissions of fact concerning plaintiff and other class members' cost for its consumer goods by falsely representing to plaintiff and other class members, on the prices advertised on its shelves, that its goods could be purchased for a certain price, when in fact defendant knew that at its registers it would instead charge plaintiff and other class members a mandatory hidden surcharge in addition to the advertised price of its consumer goods. This behavior violates ORS 646.608(1)(s).

18.

Under ORS 646.636 and ORS 646.638 and the Court's inherent power, plaintiff respectfully requests an order prohibiting defendant from continuing the unlawful trade practices alleged in this complaint, an order requiring defendant to provide an accounting of the profits it collected from the unlawful trade practices alleged in this complaint, attorney fees, costs, disbursements, and an order requiring defendant to preserve all documents and information (and electronically stored information) relevant to a claim or defense in this case.

19.

Claim Two – Unjust Enrichment

This claim is not a request for damages at this time, only equitable and injunctive relief. Plaintiff and the other class members intend to request damages in an amended complaint, only if defendant refuses to provide the identity and contact information for each putative class member, notify each member that upon request defendant will make the approximate compensation and remedy the alleged wrong, and cease from engaging in the practices alleged to be violative of the rights of the members, according to ORCP 32 I.

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2 **20.**

3 As alleged in this complaint, defendant operated a common and intentional
4 scheme to conceal the overcharges from the advertised costs of the goods it sold to
5 plaintiff and the class members when it knew or should have known that this
6 omission was in violation of Oregon law and it knew that it would charge plaintiff
7 and the class members the overcharges at its registers despite this material
8 omission. Defendant obtained a monetary benefit as increased profits through this
9 material omission and misrepresentation by collecting undisclosed surcharges from
10 plaintiff and the putative class members, entitling plaintiff and the putative class
11 members to restitution in the amount of the overcharges defendant unjustly
12 collected from them. *See, e.g.,* Restatement (Third) of Restitution and Unjust
13 Enrichment §§ 1, 13, 40, 41, 44 (2011).
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18 **21.**

19 **REQUEST FOR JURY TRIAL**

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21 Plaintiff respectfully requests a trial by a jury.
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22.

PRAYER FOR RELIEF

Plaintiff respectfully requests relief against defendant as sought above, and any other relief the Court may deem appropriate, and an order appointing interim lead class counsel, and an order certifying this case as a class action.

August 16, 2021

RESPECTFULLY FILED,

/s/ Michael Fuller

Michael Fuller, OSB No. 09357

Lead Trial Attorney for Plaintiff

OlsenDaines

US Bancorp Tower

111 SW 5th Ave., Suite 3150

Portland, Oregon 97204

michael@underdoglawyer.com

Direct 503-222-2000

Kelly Donovan Jones, OSB No. 09357

Of Attorneys for Plaintiff

Law Office of Kelly Jones

819 SE Morrison Street, Ste 255

Portland, Oregon 97214

Phone 503-847-4329

CERTIFICATE OF SERVICE

I certify that I cause this document to be served on:

**State of Oregon
c/o Oregon Department of Justice
1162 Court St. NE
Salem, Oregon 97301-4096**

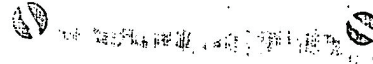
August 16, 2021

/s/ Michael Fuller
Michael Fuller, OSB No. 09357
Lead Trial Attorney for Plaintiff
OlsenDaines
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-222-2000

FILED

21 OCT 14 PM 1:56

JUDICIAL DIST.



IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

ELIZABETH ROUFFY
individually and on behalf
of others similarly situated

Plaintiff

vs

WALGREEN CO.

Defendant

Case No. 21CV32890

**ORDER ON MOTION
TO DISQUALIFY**

The Court having reviewed plaintiff's motion to disqualify and supporting
declaration,

IT IS ORDERED:

- ☒ The motion is granted.
☐ The motion is denied.

*Judge Souede appointed as new
motions judge.*

BUSHONG 10/14/21

ORDER ON MOTION – Page 1 of 3

Verified Correct Copy of Original 10/19/2021.

CERTIFICATE OF COMPLIANCE WITH UTCR 5.100

I certify that this proposed order is ready for judicial signature because I have served a copy of this order on all parties entitled to service and no objection has been served on me.

October 12, 2021

RESPECTFULLY FILED,

/s/ Michael Fuller

Michael Fuller, OSB No. 09357

Lead Trial Attorney for Plaintiff

OlsenDaines

US Bancorp Tower

111 SW 5th Ave., Suite 3150

Portland, Oregon 97204

michael@underdoglawyer.com

Direct 503-222-2000

Verified Correct Copy of Original 10/19/2021.

CERTIFICATE OF SERVICE

I caused this document to be served to:

Walgreen Co.
c/o attorney Timothy W. Snider
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, Oregon 97295
timothy.snider@stoel.com

October 12, 2021

/s/ Michael Fuller
Michael Fuller, OSB No. 09357
Lead Trial Attorney for Plaintiff
OlsenDaines
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-222-2000

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

ELIZABETH ROUFFY
individually and on behalf
of others similarly situated

Plaintiff

VS

WALGREEN CO.

Defendant

Case No. 21CV32890

**AMENDED COMPLAINT
FOR DAMAGES**

The Unlawful Trade Practices Act
ORS 646.605 *et seq.*

Filing Fee Authority: ORS 21.135
Not Subject to Mandatory Arbitration

Jury Trial Requested

1.

INTRODUCTION

After Walgreen refused Ms. Rouffy's request to refund an 80-cent overcharge, she decided to reach out to a consumer protection law firm:

[Michael Fuller] Oregon Lawyer for the
Underdog Inbox x

esrouffy@comcast.net w... Aug 14, 2021, 4:04 PM (22 hours ago) ☆ ↶ ⋮
to me ▼

Email: esrouffy@comcast.net

Question: I was charged an 80 cent "recycling fee" by Walgreens for one box of single-serve drink mix powders. The box contains 8 individually wrapped sticks of powder design to be added to a bottle of water. The entire box only cost \$1! I attempted to ascertain why I was charged this fee. A manager told me it was an Oregon State fee. After Googling this fee, I discovered this is not a new practice for Walgreens. What should I do now? I want my 80 cents returned! Thanks.

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The plaintiff in this case, Ms. Rouffy, was charged 80 cents more than the advertised sticker price when she bought Wyler's Light drink mix powder at her local Portland Walgreen store. After Walgreen refused her request for a refund, Ms. Rouffy did research on the Internet and found out that Walgreen had a history of unlawful trade practices cases in Oregon and a history of overcharging consumers.

¹ ORS 646.608(1)(s)

² ORS 646.618; ORS 646.638

³ ORS 646.638(8)

⁴ ORS 646.638(8)(3)

7.

FACTUAL ALLEGATIONS

This complaint's allegations are based on personal knowledge as to plaintiff's own behavior and are made on information and belief as to the behavior of others.

8.

Plaintiff is an individual living in Portland, Oregon.

9.

Plaintiff is a "person" as that term is defined at ORS 646.605(4).

10.

Defendant regularly advertises and sells consumer goods at its stores in Portland and throughout Oregon in the course of its business as a large corporate retailer.

11.

Defendant is a "person" as that term is defined at ORS 646.605(4).

12.

The consumer goods defendant advertised and provided to plaintiff and other class members were obtained primarily for personal, family or household purposes.

13.

On August 14, 2021, defendant advertised and provided consumer goods to plaintiff at defendant's store at 7280 SW Beaverton Hillsdale Highway in Portland, Oregon. An image of plaintiff's receipt proving her purchases is below.



14.

Defendant's sticker on its shelf advertised its Wyler's Light consumer goods to plaintiff as costing one dollar. After plaintiff paid for the Wyler's Light and read her receipt, plaintiff discovered that defendant's sticker price was falsely advertised because defendant added and collected a hidden 80-cent surcharge on the Wyler's Light that was omitted from the advertised price of the Wyler's Light to plaintiff, causing plaintiff ascertainable loss of the 80-cent overcharge that was collected from her.

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An image of the Wyler's Light drink mix powder that defendant advertised and sold to plaintiff on August 14, 2021 is below.



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2 **16.**

3 **CAUSES OF ACTION**

4 **Claim One – Unlawful Trade Practices**

5
6 As alleged in this complaint, in the course of its business, defendant made
7 false or misleading representations and omissions of fact concerning plaintiff and
8 other class members' cost for its consumer goods by falsely representing to plaintiff
9 and other class members, on the prices advertised on its shelves, that its goods could
10 be purchased for a certain price, when in fact defendant knew that at its registers it
11 would instead charge plaintiff and other class members a mandatory hidden
12 surcharge in addition to the advertised price of its consumer goods. This behavior
13 knowingly and recklessly violates ORS 646.608(1)(s), and so under ORS 646.638
14 plaintiff is entitled to judgment for \$200.00 statutory damages, attorney fees and
15 costs.
16
17

18 **17.**

19 **REQUEST FOR JURY TRIAL**

20
21 Plaintiff respectfully requests a trial by a jury.
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18.

PRAYER FOR RELIEF

Plaintiff respectfully requests relief against defendant as sought above, and any other relief the Court may deem appropriate, and an order appointing interim lead class counsel, and an order certifying this case as a class action.

July 28, 2022

RESPECTFULLY FILED,

/s/ Michael Fuller

Michael Fuller, OSB No. 09357

Lead Trial Attorney for Plaintiff

OlsenDaines

US Bancorp Tower

111 SW 5th Ave., Suite 3150

Portland, Oregon 97204

michael@underdoglawyer.com

Direct 503-222-2000

Kelly Donovan Jones, OSB No. 09357

Of Attorneys for Plaintiff

Law Office of Kelly Jones

819 SE Morrison Street, Ste 255

Portland, Oregon 97214

Phone 503-847-4329

CERTIFICATE OF SERVICE

This document was delivered to the following:

Walgreen Co.
c/o Attorney Timothy W. Snider
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
timothy.snider@stoel.com

July 28, 2022

/s/ Michael Fuller
Michael Fuller, OSB No. 09357
Lead Trial Attorney for Plaintiff
OlsenDaines
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-222-2000